



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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[REDACTED]

Dear [REDACTED]:

This letter is in response to your inquiry to Senator [REDACTED] dated October 10, 2000, in which you expressed concern that the metrocards provided by your company, were in violation of an IRS regulation regarding gifts to employees. We want to reassure you that we have not issued regulations that prevent employers from giving transit passes to employees.

The following information is included in the proposed regulations for qualified transportation benefits, which were issued January 27, 2000. The Department of Treasury recently issued final regulations on qualified transportation fringe benefits. [66 Federal Register 2241 (January 11, 2001).]

Gross income does not include any fringe benefit that qualifies as a qualified transportation fringe. [Section 132(a)(5) of the Internal Revenue Code (the Code).] Employers may only give qualified transportation fringes to employees. An employer may simultaneously give an employee one or more of the following qualified transportation fringe benefits: 1) transportation in a commuter highway vehicle (i.e., van pools), 2) any transit pass, and 3) qualified parking.¹ The value of these benefits can not exceed \$245 per month (\$65 for transportation in a commuter highway vehicle and transit passes, plus \$180 for qualified parking).

Employers May Provide Cash Reimbursement to the Employee

Employers may provide cash reimbursement if transit passes are not readily available for direct distribution by the employer to the employee. [Section 132(f)(3) of the Code.] A transit pass is considered readily available if an employer can obtain it at the same

¹Transit pass means any pass, token, farecard, voucher, or similar item entitling a person to transportation on mass transit facilities or in a commuter highway vehicle.

price as the employee, without incurring significant administrative costs. The employee must provide substantiation to the employer as a condition to receiving cash reimbursement. The substantiation requirements vary depending upon the payment method used. For example, if an employee uses metered parking, the substantiation requirement may be satisfied if the employee certifies the expense was incurred, and the employer believes the employee actually incurred the expense.

Employers Can Provide Transportation Benefits Using a Compensation Reduction Arrangement.

Employers can provide qualified transportation benefits using a compensation reduction arrangement. Under this arrangement, the employer reduces an employee's gross income by the value of the transportation benefit, which gives him or her pretax savings on the cost of commuting to work. An employee can elect to receive either a fixed amount of cash compensation at a specified future date or a fixed amount of qualified transportation benefits, such as parking, during a specified future period. The election must be made before the employee receives the cash or transportation benefit, and it may not exceed the statutory monthly limits. In 2001, the maximum amount an employee could elect to reduce compensation by is \$245 per month (\$65 for transportation in a commuter highway vehicle and transit passes, plus \$180 for qualified parking). On January 1, 2002, the amount for transportation in a commuter highway vehicle and transit passes will increase to \$100 per month.

Partners, 2-Percent Shareholders and Independent Contractors.

Individuals who are partners, 2-percent shareholders, or independent contractors, are not employees for the purposes of section 132(f). However, the working condition and de minimis fringe exclusions are available for transit passes provided to these individuals. For example, farecards provided by a partnership to an individual who is a partner can be excluded from the partner's gross income. However, the value of the farecard cannot exceed \$21 per month. If the value exceeds \$21 per month, the full value of the benefit (not just the amount in excess) is included in gross income. [Section 1.132-6(d)(1) of the Income Tax Regulations.]

Under the Freedom of Information Act, we will make this letter available to the public after we delete names, addresses, and other identifying information.

I hope this information answers your questions. Please call Robyn Mathis (ID No. 50-15986) of my staff at (202) 622-6040.

Sincerely,

Mary Oppenheimer
Assistant Chief Counsel
(Exempt Organizations/
Employment Tax/Government Entities)